

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8452 of 2014

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1. The Union of India through the Secretary, Department of Railway, New Delhi
 2. The General Manager (Karmik), East Central Railway, Hajipur, District-
Vaishali
 3. The Chairman Railway Recruitment Board, Mahendrughat, Patna- 800004

.... Petitioners.

Versus

Balram Choudhary, Son of Ram Narayan Choudhary, Resident of Village and Post
Office- Tulapatti, Police Station- Pipra, District- Supaul

.... Respondent.

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Appearance :

For the Petitioner : M/s. D.K. Sinha, Senior Advocate and Abhinay Raj,
Advocates.

For the Respondent : Mr. Manoj Kumar and Mr. Uday Chand, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 18-11-2016

Heard learned senior counsel for the petitioner-Railway
and learned counsel for the sole respondent.

2. This writ application has been filed for setting aside the order dated 31.07.2013 passed in O.A. No.555 of 2010 by the Central Administrative Tribunal, Patna Bench, Patna, by which the respondents/petitioners were directed to consider the case of the applicant/respondent for alternative appointment in view of his medical clearance given on 21.01.2008 and to grant him same benefit as the applicants of O.A. 23 of 2010 if he is otherwise eligible subject



to outcome of the decision of the High Court of Jharkhand in Writ Petition 2259 of 2009 and the exercise should preferably be completed within a period of four months from the date of receipt of a copy of the order.

3. The respondent Balram Chaudhary had applied for appointment pursuant to Employment Notice No.1 of 2003 published by the Railway Recruitment Board, Mahendrughat, Patna against 22 posts of Group-D posts of Gangman/trackman. Pursuant to the written test and verification of certificates, final result was published on 30.11.2005. The respondent was sent a letter dated 06.01.2006 by the Assistant Personnel Officer, ECR, Dhanbad Division, for appointment as temporary Gangman/Trackman subject to being found fit in medical examination. After medical examination, the respondent was found unfit in category B-1 for which he had applied. Thereafter, the General Manager, ECR, vide letter dated 14.07.2006, asked the Divisional Rail Manager, ECR, Danapur, to inform as to on which date the respondent was found unfit in category B-1. Pursuant to the same, vide letter dated 28.02.2007, the respondent was directed to appear for re-medical examination for which he appeared and was found fit for Category B-II and below. However, no further action was taken in the matter by the Railway Authorities and the respondent himself made a representation on 11.11.2008 and, thereafter, he again



filed an application under R.T.I. Act on 19.08.2009, upon which he was informed that he was declared unfit in the medical examination in category B-1 and as per the Railway Board's Circular dated 25.05.2009, the Board has decided to discontinue the policy of providing the alternative appointment to the medically failed empanelled candidates selected through RRBs/RRCs for any Group 'C' or Group 'D' posts. Being aggrieved by the same, the respondent filed O.A. No.555 of 2010 before the Central Administrative Tribunal, Patna Bench, Patna, which has been allowed in the aforesaid terms, as stated above.

4. Two issues have been raised by the learned senior counsel for the Railway before this Court. First is that, as per the prevailing Rules, the panel is valid for a period of two years and as this panel was prepared on 30.11.2005, it has lost its validity after 30.11.2007. It is, thus, submitted that in the circumstances, the respondent could not have been appointed after 30.11.2007 and, therefore, his claim has to be rejected. The second submission of learned senior counsel for the petitioners is that the respondent himself admits that after the re-medical examination held on 05.09.2007, for the first time, he approached the Railway authorities on 11.11.2008 and that too without any clear cut evidence and, therefore, his case is barred by delay and laches and the decision has



been rightly taken under the policy decision of the Railway Board to discontinue the policy of providing alternative appointment to the medically failed empanelled candidates selected through RRBs/RRCs for any Group 'C' or Group 'D' post. It is further submitted that once the said policy decision has been taken, no authority or officer of the Railway can make any such alternative appointment and, thus, the claim of the respondent for appointment has rightly been denied.

5. Learned counsel for the respondent, on the other hand, submits that neither of the aforesaid two submissions, as raised on behalf of the Railway, has any basis either on facts or in law. It is contended that the expiry of panel is solely on account of inaction of the petitioner and, they cannot be permitted to take advantage of their own wrong to deny the claim of the respondent.

It is further submitted that even though the re-medical examination, after the respondent was found medically unfit during first medical examination for category B-1, has been directed nearly 1½ years after the earlier medical examination but the respondent was found medically fit therein for category-B-2, and the Railway authorities should have issued the direction to the respondent to join in the said category but they did not chose to do so and, thus, they cannot take the plea of expiry of the panel.

With regard to the further submission of learned counsel



for the petitioner-Railway, it is submitted that the appointment is governed by the rules and terms and conditions as were prevailing on the date of advertisement and not on account of any subsequent amendments made in the Rules or Policy or any other change in policy.

Lastly, it is submitted by the learned counsel for the respondent that in view of Articles-14 and 16 of the Constitution of India, the petitioners cannot deny the appointment to the respondent as four similarly situated persons in the same recruitment process found unfit for category B-1, have been given employments to category B-2 in Danapur Division, which is the admitted position.

6. Having heard the submissions of the learned counsel for the parties, we find force in the submission of the learned counsel for the respondent. It is trite that no person can be permitted to take advantage of his own wrong to deny the benefit to the other person. It was well known to the petitioners that the panel was valid only for two years and, as per the policy decision of the Board, in case the candidate failed in the medical examination for appointment in the upper category then he could be appointed to the lower category in terms of the Board's letter dated 26.10.1962, which was prevailing from 26.10.1962 and made applicable vide letter dated 20.08.1999 for Group-D post. In the circumstances, the petitioners could not have



acted in the lackadaisical manner as they have done, rather immediately the respondent was found medically unfit for category B-1, he ought to have been medically reexamined for any other lower category for which he could be found medically fit and, thereafter, he should have been appointed subject to the requirements of the circular unless he had expressed his intention not to accept the lower category.

7. In the present matter, it is evident that the respondent himself represented before the Railway authority for re-medical examination. Pursuant to the letter dated 28.02.2007, the respondent appeared for re-medical examination and he was found fit for category-2 in the said medical examination. Even after re-medical examination held on 05.09.2007, the petitioners had about three months to issue the appointment letter to the respondent but they did not chose to do so, rather it appears from perusal of the materials available on the record that the appointment was denied due to a desultory correspondence between the officers and authorities of the Railway.

So far as the question of denial of appointment of the respondent on the basis of subsequent circular dated 25.05.2009 of the Board by which the Board has decided to discontinue the policy of providing the alternative appointment to the medically failed empanelled candidates selected through RRBs/RRCs for any Group



‘C’ or Group ‘D’ posts, is concerned, the said policy decision could not have been applied with respect to the recruitment process which has already taken place. It is an established preposition of law that a recruitment process is governed by the Rules and the terms and conditions which are prevailing on the date of advertisement or at any rate on the last date for filing the application. Evidently, the change of the policy decision has taken place almost six years after the recruitment process has been initiated. Thus, it has no relevance so far as the appointment of the respondent is concerned and the same could not have been relied upon to deny him the appointment.

This Court is also in agreement with the submission of the learned counsel for the respondent that it is not open to the petitioners to have treated the respondent differently from other candidates who had applied for the same post in the same recruitment process and had been found medically unfit for category B-1 post but had been appointed for category B-2. This factual aspect of the matter is admitted by learned senior counsel for the petitioners. If the benefit of the policy decision has been given to other persons, the same benefit cannot be denied to the respondent.

8. Thus, for the aforesaid reasons, we are of the view that the petitioners are obliged to provide alternative appointment to the respondents under category B-2 for which he was found medically fit



in the re-medical examination.

9. Accordingly, the writ application is dismissed with a direction to the petitioner-Railway to appoint the respondent on the said post within a period four weeks from the date of receipt /production of a copy of this order.

(Ramesh Kumar Datta, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-P.S.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2017
Transmission Date	

